

**STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING**

RE: Matthew Berube, R.N.
License No. E58725

Petition No. 2011-94

MEMORANDUM OF DECISION

Procedural Background

Matthew Berube (hereinafter "petitioner") was issued Registered Nurse ("RN") license number E58725. Pursuant to a Memorandum of Decision dated January 16, 2008 ("the Decision"), the Board of Examiners for Nursing (hereinafter "the Board") ordered the revocation of petitioner's RN license. Bd. Ex. 1. Pp. 9-14. In a letter dated December 7, 2010, petitioner requested that the Board grant him a relicensure hearing and reinstate his RN license. Bd. Exh. 1, pp. 3-8.

Pursuant to petitioner's request, the Board issued a Notice of Hearing ("the Notice") dated January 31, 2011, scheduling a hearing for April 20, 2011. Bd. Exh. 1, p. 1. After one continuance, a hearing was held on June 15, 2011. Bd. Exh. 2. Petitioner was represented at the hearing by Attorney Louis B. Todisco; the Department of Public Health ("the Department") was represented by Attorney David Tilles. Tr. pp. 2-3.

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record and the Board's specialized professional knowledge in evaluating the evidence.

Findings of Fact

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Petitioner previously held license number E58725 to practice as a RN. Bd. Exh. 1, p. 2.
2. In January 2008, pursuant to the Decision, the Board ordered the revocation of petitioner's RN license based on findings that petitioner's illegal and negligent conduct in 1999 and subsequent five-year incarceration from 2001 to 2006 rendered him unable to practice nursing with reasonable skill and safety. Bd. Exh. 1, pp. 9-14.
3. After his release from prison in 2006, petitioner was placed on probation for five years. While on probation, petitioner worked in manufacturing and later in construction, progressing from an electrician's assistant to a registered electrical apprentice. When his position was eliminated in

2009, he returned to school to complete his bachelor's degree in Legal Studies, which he attained from Post University in the summer of 2011. Petitioner also passed an intense, six-month refresher course in nursing. Bd. Exh. 1, pp. 15-16, 20, 22, 24, 35; Pet. Exh. 3.

4. Petitioner's former employers consistently rated his job performance as "quality performance" or higher. He was also commended for his professionalism, strong organizational skills, and attention to detail. Bd. Exh. 1, pp. 20-23; Pet. Exh. 4, pp. 2-64.
5. Professional evaluations conducted by a psychologist, psychiatrist and a forensic psychiatrist attest that petitioner poses no risk of violence towards the public; and, with refresher training to demonstrate a certain level of proficiency and competency, he can return to the practice of nursing with reasonable skill and safety. Bd. Exh. 1, pp. 26-34 (under seal); Pet. Exh. 2, pp. 16-20 (under seal); Tr. pp. 122-128 (under seal).

Discussion and Conclusions of Law

As stated in the Notice, petitioner has the burden of proof in satisfying the Board that he is able to practice as a RN by presenting relevant evidence at the hearing that he is able to return to practicing nursing with reasonable skill and safety, including the following:

1. Documentary evidence from a psychological consultation assessing petitioner's cognitive abilities, personality traits and the current state of his mental health. Bd. Exh. 1, pp. 26-34 (under seal).
2. Documentary evidence from a psychiatric consultation documenting no evidence of a mood, anxiety, psychotic, cognitive or substance abuse disorder. Bd. Exh. 1, p. 34 (under seal).
3. Documentary and testimonial evidence from a forensic psychiatric consultation assessing his personality, cognitive, intellectual, emotional and social functioning and his readiness to resume the practice of nursing. Pet. Exh. 2, pp. 18-20 (under seal), Tr. pp. 122-128 (under seal).
4. Documentary evidence from his probation officer documenting the special conditions imposed at the time of his sentencing and attesting to his compliance with such conditions during his incarceration and probationary period, including completion of psychological and anger management treatment. The level of supervision and monitoring required during his probation was also reduced because of his exemplary behavior. Pet. Exh. 3.
5. Documentary evidence from his former employers, addressing his work habits and job performance. Bd. Exh. 1, pp. 20-23; Pet. Exh. 4, pp. 2-64.

In addition to completing his formal education, petitioner also took the initiative to successfully complete, at his own expense, an intense six month nursing refresher program, offered by the Consolidated Learning Services. He has also expressed his willingness to sit for the RN licensing examination to determine his competency and to comply with any other Board requirements that will demonstrate his fitness to resume nursing.

Thus, the Board finds that the petitioner has presented relevant and credible evidence to sustain his burden of satisfying the Board that he is able to return to the practice of nursing under the terms of the Order described below.

Order

Pursuant to §§ 19a-17 and 20-99 of the General Statutes (“the Statutes”), the Board hereby orders the following:

1. Registered Nurse license number E58725, of petitioner, Matthew Berube, is hereby reinstated and immediately restricted in that he is prohibited from practicing as a RN and may only use his RN license for the sole purpose of participating in a refresher program as set forth in paragraph 2 of this Order.
2. Petitioner shall successfully complete a Board-approved Registered Nurse refresher course with a clinical component and successfully take the licensing examination for RNs (offered by the National Council of State Boards of Nursing Licensing Examination, “NCLEX”).
 - A. Certification of successful completion of the RN refresher program shall be submitted to the Board, directly from the educational institution where said program was taken, within thirty (30) days of the program's completion.
 - B. Petitioner shall submit an application to the Department’s licensing authority. Petitioner shall be administered the licensing examination for RNs. Petitioner shall incur all expenses associated with applying for and taking the RN licensing examination (NCLEX).
 - C. Petitioner shall attain a passing score on the licensing examination for RNs.
 - D. Until such time that petitioner successfully completes the RN refresher program and attains a passing score on the RN licensing examination (NCLEX), petitioner is prohibited from practicing as a RN and petitioner’s RN license will be restricted and used for the sole purpose of participating in the RN refresher program.

3. Upon notification by the Department that petitioner has satisfied the terms set forth in paragraph 2, petitioner's registered nurse license number E58725, shall be placed on probation for a period of one year under the following terms and conditions:
 - A. Petitioner shall not be employed as a RN for a personnel provider service, assisted living services agency, homemaker-home health aide agency, or home health care agency, and shall not be self-employed as a RN for the period of probation.
 - B. Petitioner shall provide a copy of this Memorandum of Decision to any and all employers if employed as a RN during the probationary period. The Board shall be notified in writing by any employer(s), within thirty (30) days of the commencement of employment, as to the receipt of a copy of this Memorandum of Decision.
 - C. If employed as a RN, petitioner shall cause employer reports to be submitted to the Board, by his immediate supervisor during the entire probationary period. Employer reports shall be submitted commencing with the report due on the first business day of the month following employment as a nurse. Employer reports shall be submitted monthly during the entire probationary period.
 - D. The employer reports cited in paragraph 3C above shall include documentation of petitioner's ability to safely and competently practice nursing. Employer reports shall be submitted directly to the Board at the address cited in Paragraph 3H below.
 - E. Should petitioner's employment as a RN be involuntarily terminated or suspended, respondent and his employer shall notify the Board within seventy-two (72) hours of such termination or suspension.
 - F. If petitioner pursues further training in any subject area that is regulated by the Department, petitioner shall provide a copy of this Memorandum of Decision to the educational institution or, if not the institution, to petitioner's instructor. Such institution or instructor shall notify the Department in writing of receipt of a copy of this Memorandum of Decision within fifteen (15) days of receipt. Said notification shall be submitted directly to the Department at the address cited in paragraph 3H below.
 - G. The Board must be informed in writing prior to any change of address.
 - H. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P. O. Box 340308
Hartford CT 06134-0308

4. Any deviation from the terms of probation, without prior written approval by the Board shall constitute a violation of probation, which will be cause for an immediate hearing on charges of violating this Order. Any finding that petitioner has violated this Order will subject petitioner to sanctions under §19a-17(a) and (c) of the Statutes, including but not limited to, the revocation of his license. Any extension of time or grace period for reporting granted by the Board shall not be a waiver or preclude the Board's right to take subsequent action. The Board shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to petitioner's address of record (most current address reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department or the Board).
5. This Memorandum of Decision becomes effective on the date signed by the Board.

The Board hereby informs petitioner, Matthew Berube, and the Department of this decision.

Dated at Hartford, Connecticut this 27th day of November, 2011.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bouffard, R.N., M.Sc.
Patricia Bouffard, R.N.
Chairperson

CERTIFICATION

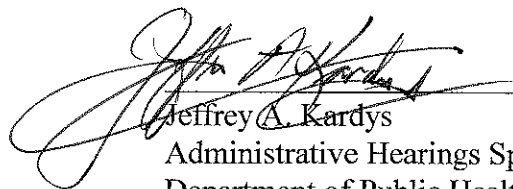
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 3rd day of November 2011, by certified mail, return receipt requested to:

Louis Todisco, Esq
Murtha Cullina, LLP
Whitney Grove Square
Two Whitney Avenue
PO Box 704
New Haven, CT 06503-0704

Certified Mail RRR #91-7108-2133-3936-6805-9910

and via email to:

Matthew Antonetti, Principal Attorney
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

August 20, 2013

Matthew Berube, RN
44 Lakeview Road
Terryville, CT 06786-7218

Re: Memorandum of Decision
Petition No: 2011-94
License No. E58725

Dear Mr. Berube:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective August 17, 2013.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from your license related to the above-referenced Memorandum of Decision.

Please be certain to retain a copy of this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during this process, and good luck to you in the future.

Very truly yours,

Bonnie Pinkerton

Bonnie Pinkerton, RN, Nurse Consultant
Practitioner Licensing and Investigations Section

cc: J. Filippone
J. Wojick



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